

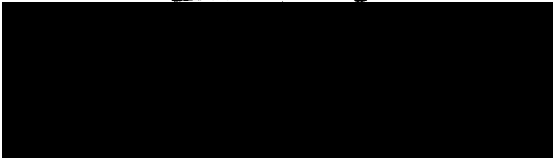
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U.S. Department of Homeland Security  
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Washington, DC 20536



U.S. Citizenship  
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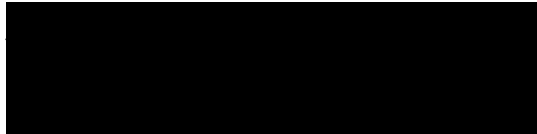


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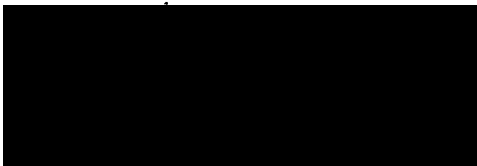
FILE: WAC 02 041 55888 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner:  
Beneficiary:



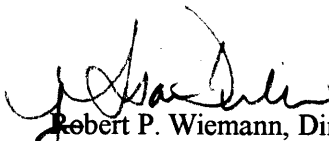
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the  
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



**INSTRUCTIONS:**

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The director of the service center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a skilled nursing facility that seeks to employ the beneficiary as a registered nurse (quality assurance coordinator). The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101 (a)(15)(H)(i)(b).

The director denied the petition because the proffered position is not a specialty occupation. On appeal, counsel submits a letter.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184 (i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a registered nurse (quality assurance coordinator). Evidence of the beneficiary's duties is described in the Form I-129. According to this evidence, the

beneficiary would perform duties that entail, in part: reviewing, interpreting, writing, and implementing quality assurance standards in a facility to ensure care to patients; and interviewing personnel and patients to evaluate quality assurance programs.

The director found that the proffered position was not a specialty occupation. The director stated that in determining whether a position is a specialty occupation, the actual duties to be performed are determinative, not the position's title. The director found that the proffered position's duties are consistent with those of a registered nurse, and noted that a degree in nursing is less than a baccalaureate level degree.

Counsel states that the petitioner, on appeal, seeks to change the title of the proffered position to "quality assurance coordinator" because the title "registered nurse" preceding the language "quality assurance coordinator" is a typographical error. Counsel further states that the petitioner never intended to file a petition for a registered nurse as the beneficiary will not perform nursing duties but will perform administrative responsibilities. Counsel recounts the beneficiary's duties as originally described in the Form I-129, and adds new duties, not previously described, such as reviewing and evaluating patient records, and overseeing personnel engaged in quality assurance review of medical records. Next, counsel claims "a person possessing a baccalaureate or higher degree would best be suited to perform the job, although it doesn't prevent one with [a] lesser degree to [do] the same." Counsel states that a person with a higher degree would be more competent, considering the complexities of the expected tasks.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

Counsel seeks on appeal to change the proffered position's title. When responding to a request for evidence or filing an appeal, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title or its associated job responsibilities. The petitioner must establish that the position offered to the beneficiary is a specialty occupation. *See Matter of Michelin Tire*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. The AAO will, therefore, disregard the newly proposed title of the position on appeal, and the duties that weren't described by the petitioner in the original Form I-129.

The AAO turns first to the criteria at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree. Factors often considered by CIS when determining these criteria include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." *See Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

Counsel claims that the beneficiary will perform administrative duties, not nursing responsibilities. According to counsel a person possessing a baccalaureate or higher degree would best be suited to perform the job; however, counsel concedes that a person holding less than a bachelor's degree could perform the

duties of the proffered position. Counsel further mentions that a person with a higher degree would be more competent, considering the complexities of the expected tasks.

CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. A review of the *Handbook* reveals that the duties of the proffered position resemble those of a nursing home nurse. According to the *Handbook*, these nurses spend most of their time on administrative and supervisory tasks. As the director noted, the *Handbook* reports that all States and the District of Columbia require a nursing license. Furthermore, as the director correctly stated, the *Handbook* explains that a bachelor's degree is not required to entry into the occupation. Counsel openly confirms the *Handbook's* findings by stating that a person possessing less than a bachelor's degree could perform the duties of the proffered position. Thus, counsel admits that a baccalaureate or higher degree or its equivalent is not normally the minimum requirement for entry into the proffered position.

Now to the second criterion at 8 C.F.R. § 214.2 (h)(4)(iii)(A): a degree requirement is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree. No evidence has been submitted to establish an industry-wide requirement of a bachelor's degree. As indicated by counsel, the proffered position is not complex or unique because a person possessing less than a bachelor's degree could perform the position's responsibilities.

There is no evidence to establish that the employer normally requires a degree for the proffered position; thus, the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) is not established.

Likewise, no evidence is presented to satisfy the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) – that the nature of the specific duties are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. The *Handbook* reveals that nursing home nurses perform the duties of the proffered position. Moreover, counsel's allegation "a person with a higher degree would be more competent, considering the complexities of the expected tasks," is undercut by counsel's concession that a person not possessing a baccalaureate or higher degree could perform the duties of the proffered position.

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed. The petition is denied.